

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

James A. Macove

Application No. 10/750,244

Confirmation No. 8872

Filed: December 31, 2003

Art Unit: 3724

For: RAZOR HAVING SEPARATE BLADE
GROUPS FOR SHAVING AND
TRIMMING/SCULPTING

Examiner: Jason D. Prone

I hereby certify that this correspondence is being sent via EFS Web on the date shown below.

Dated: April 13, 2009 Signature:



(Ronald E. Cahill)

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REPLY BRIEF

In response to the Examiner's Answer to Appellant's Brief dated February 13, 2009,
Appellant states in response to Examiner's arguments as follows:

I. Introduction

Appellant has appealed the rejection of claims 21, 22, 24-27, 30-32, and 40-44 (all of the pending claims), and submitted an Appeal Brief on November 25, 2008. The Examiner filed an Answer to the Appeal Brief on February 13, 2009 to which Appellant now responds. All of the bases for rejection have been addressed in the Appeal Brief, and Appellant submits this Reply Brief only to address the Examiner's "Response to Argument."

As has been noted in Applicant's Appeal Brief, Applicant has discovered that the geometry of the claimed razor system is critical to its success as a trimming and shaving device. In particular, the angle between the working planes for broad area shaving and trimming is a further critical aspect of this geometry. The Examiner has not disputed that Rozenkranc (the only relevant prior art) does not disclose this aspect of Applicant's invention. Applicant's configuration of the razor makes it superior to Rozenkranc, as well as everything else that came before it. Following the filing and publication of the patent application now under appeal, power players in the shaving industry have adopted Applicant's configuration – not Rozenkranc's. [CITE to Appeal Brief.] The reason that they have done so is that Applicant's configuration has changed the nature of shaving with multi-blade razors. The Examiner's arguments as to the obviousness of this configuration, unsupported by the rationale required by *KSR*, should be reversed.

II. Claims 21 et al. Are Not Obvious Over Rozenkranc

Claim 21 recites a single razor cartridge 12 for use with a handle 14 for providing both broad area shaving 32 and trim shaving 52 blade groups within a single cartridge. Importantly, the razor cartridge includes first 30 and second 50 working planes that intersect each other so as to define a line of intersection that is substantially transverse to the handle axis 16, and the first and second working planes intersect at an included angle θ between about 75 degrees and 135 degrees. As the Examiner admits – no reference teaches this configuration, there are no combinations of references that teach this configuration – the Examiner makes out the obviousness rejection only by modifying the Rozenkranc reference in ways that are not taught or suggested in the art.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F. 2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In doing so, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1996). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Furthermore, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ [H]owever, the analysis need not seek out precise teaching directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

The Examiner admits that Rozenkranc discloses only a different configuration from that recited in claim – that is, in its figures, Rozenkranc appears to show only a configuration that has a much shallower angle between the working planes than the recited 75 to 135 degrees. Further, Rozenkranc has no explicit disclosure of this feature at all – Rozenkranc does not recognize this angle as important, and, in fact, does not mention it at all. In his Answer, the Examiner proposes two bases for modifying Rozenkranc, and neither is supported with the rationale required by *KSR*. It thus appears that the obviousness rejection in this case is nothing more than an impermissible hindsight reconstruction of claim 21 using the Applicant’s invention as a template.

The first of the two reasons applied by the Examiner is *In re Aller* – that is, that the development of workable ranges is within the ability of the person of ordinary skill in the art. Applicant discussed this case in the Appeal Brief and pointed out that *In re Aller* depends upon the variable being optimized having been recognized as a result effective parameter. The Examiner’s arguments in this regard appear to recognize that the relationship between the first and second working planes has not been recognized as a result effective parameter. The Examiner cites to WO 94/26476 only for the purpose of showing that “it is old and well known and well within one’s technical grasp for alternate embodiments of the same razor to have different plane angles.” The irrelevance of WO 94/26476 to claim 21 has been discussed

extensively in the Appeal Brief. [Appeal Brief at 14-17.] It does not relate to a razor having a trim blade at all (it relates to a two sided razor having two “first working planes” (presumably so that the razor cartridge can be used twice as many times before being replaced) and not a first broad shaving plane and as second trim shaving plane)), and the Examiner appears to recognize that it does not suggest that the angle between first broad shaving plane and the second trim shaving plane is a result effective parameter.

Instead, the Examiner seems to be saying (without expressly saying it) that WO 94/26476 provides the rationale for modifying Rozenkranc by changing the angle between the working planes. Such an argument, if it were expressly made, would also fail. WO 94/26476 says nothing about the angle of any working plane – its only goal is to vary the angle of the shaving blades with respect to a shaving plane. [*Id.*] The Examiner also appears to recognize this fact, referring only to Figures 5A, 5B, and 6 of the reference – as taking the reference as a whole undercuts rather than supports the Examiner’s rationale. Figures 5A, 5B and 6, drawings that are not made to scale, show double sided razors having no trimming capabilities, in which the angles of the blades vary with respect to the shaving planes. While there does seem to be a variation in the angle between the “first plane” and the other “first plane” (as opposed to the planes of claim 21) between Figures 5A and 5B, this variation seems to be as a result of the author’s stated goal of mounting the “following razor blades 3” in the same plane. That is, it is meant to address a manufacturing concern that is not present in Rozenkranc or the present invention. WO 94/26476 in no way suggests varying the angle between a broad shaving plane and trim shaving plane in order to make the razor easier to use.

The second of the two reasons for modifying Rozenkranc is a new reason raised for the first time in the Examiner’s Answer (despite the fact that this application has been prosecuted through final rejection, and RCE, and through final rejection again with Rozenkranc being the primary reference in each case). The Examiner now says that because the *angle between the blades* can be varied, that this would according move the working planes into the range specified by claim 21. Specifically, the Examiner states that if one moved the blades to the outermost limit of Rozenkranc’s range (namely, 120 degrees), and if you make some assumptions about how one might do that (most importantly, that the angle between each blade and its respective plane remains fixed), that by adding up all of the angles from the Figures with the new

modifications proposed by the Examiner, the angle between the working planes would fall within the range of claim 21 (although the Examiner does not say what this angle would add up to). There are many problems with this analysis. First, the Examiner's assumptions are not supported by Rozenkranc. Rozenkranc never says that the angles between the blades and the planes should remain fixed. In fact, of the references applied, the only teaching on the subject of the relationship between the blades and the planes comes from WO 94/26476, which says that the angles should be varied – even from blade to blade. Further, while the angles between the blades can “suitably” be as large as 120 degrees, Rozenkranc states that the angle is “advantageously” between 85 and 95 degrees. That is, Rozenkranc specifically teaches as advantageous a configuration that is very different from that proposed by the Examiner as a modification. Still further, the Examiner expressly recognizes that the figures of Rozenkranc are not drawn to scale and that the Examiner may not use the exact dimensions from the Figures – but then the Examiner does exactly that in his recreation of Rozenkranc with new blade angles.

There is no rationale for modifying Rozenkranc. Rozenkranc purports to solve the problem of trimming when using a multi-blade razor. A person of ordinary skill having common sense as required by KSR would not look to WO 94/26476 to improve on Rozenkranc in any way – unless it was to vary the blade angles with respect to the shaving planes – not what is recited in claim 21. That person would also not be motivated to change Rozenkranc to a less advantageous configuration (according to Rozenkranc itself) based on contradicted assumptions (that the angles between the blades and planes would not change if the angles between the blades did change). The lack of supportable rationales for modifying Rozenkranc indicates that the true reasoning behind this rejection is *ex post*, and that the rejection is based upon the impermissible use of hindsight.

III. Claims 41 et al. Are Not Anticipated by Rozenkranc

The Answer focuses on two aspects of this rejection. First, the Examiner asserts, referring to Appendix A of the Final Office Action, that only element 400a as labeled by the Examiner could correspond to the “leading edge blade guard.” This is not true. Element 400a appears to be a “hair lifter” (see element 6 of Rozenkranc which has a similar shape and location and is labeled as such by Rozenkranc). In any event, only the portion 400a cannot be the blade

guard because that portion does not actually guard the blade. The portion artificially highlighted by the Examiner is spaced apart from and well forward from the blade – if there were no structure between 400a and the blade (i.e., if the rest of the blade guard was not there) there would be nothing to prevent the shaver from driving the blade into his skin. The blade guard must act as a guard for the blade, it cannot be something separate and apart from the blade that does not guard it.

The Examiner suggests that Applicant is arguing that the recited “thin” blade guard is thinner than Rozenkranc element 400a – Applicant’s argument is that Rozenkranc’s blade guard extends from the blade to the leading edge (400 as labeled by the Examiner in Appendix A) as illustrated in the figure provided on page 24 of the Appeal Brief. The purpose of making the leading edge blade guard “thin” is to “allow the distance between the cutting blade and the individual’s skin to be optimally minimized to facilitate shaving in confined hard-to-reach areas of the face.” [See, Appeal Brief at 21.] Rozenkranc’s blade guard, which includes the structure from the leading edge of the second working plane leading up to the blade, is not thin, and does not accomplish this purpose.

The second position taken in the Answer is essentially that relative terms can never be used in patent claims because an adult who weighs 100 lbs will not think that an adult who weighs 110 lbs is thin. The case law says the opposite. [See, Appeal Brief at 21 to 23.]

IV. Conclusion

For the reasons noted above, as well as those argued in Appellant's Appeal Brief, Appellant submits that the pending claims define patentable subject matter.

Respectfully submitted,



Dated: April 13, 2009

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